

FIRST DIVISION

[G.R. No. 118342. January 5, 1998]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner*, vs. COURT OF APPEALS and LYDIA CUBA, *respondents*.

[G.R. No. 118367. January 5, 1998]

LYDIA P. CUBA, *petitioner*, vs. COURT OF APPEALS, DEVELOPMENT BANK OF THE PHILIPPINES and AGRIPINA P. CAPERAL, *respondents*.

DECISION

DAVIDE, JR., J.:

These two consolidated cases stemmed from a complaint^[1] filed against the Development Bank of the Philippines (hereafter DBP) and Agripina Caperal filed by Lydia Cuba (hereafter CUBA) on 21 May 1985 with the Regional Trial Court of Pangasinan, Branch 54. The said complaint sought (1) the declaration of nullity of DBPs appropriation of CUBAs rights, title, and interests over a 44-hectare fishpond located in Bolinao, Pangasinan, for being violative of Article 2088 of the Civil Code; (2) the annulment of the Deed of Conditional Sale executed in her favor by DBP; (3) the annulment of DBPs sale of the subject fishpond to Caperal; (4) the restoration of her rights, title, and interests over the fishpond; and (5) the recovery of damages, attorneys fees, and expenses of litigation.

After the joinder of issues following the filing by the parties of their respective pleadings, the trial court conducted a pre-trial where CUBA and DBP agreed on the following facts, which were embodied in the pre-trial order:^[2]

1. Plaintiff Lydia P. Cuba is a grantee of a Fishpond Lease Agreement No. 2083 (new) dated May 13, 1974 from the Government;
2. Plaintiff Lydia P. Cuba obtained loans from the Development Bank of the Philippines in the amounts of ₱109,000.00; ₱109,000.00; and ₱98,700.00 under the terms stated in the Promissory Notes dated September 6, 1974; August 11, 1975; and April 4, 1977;
3. As security for said loans, plaintiff Lydia P. Cuba executed two Deeds of Assignment of her Leasehold Rights;
4. Plaintiff failed to pay her loan on the scheduled dates thereof in accordance with the terms of the Promissory Notes;
5. Without foreclosure proceedings, whether judicial or extra-judicial, defendant DBP appropriated the Leasehold Rights of plaintiff Lydia Cuba over the fishpond in question;
6. After defendant DBP has appropriated the Leasehold Rights of plaintiff Lydia Cuba over the fishpond in question, defendant DBP, in turn, executed a Deed of Conditional Sale of the Leasehold Rights in favor of plaintiff Lydia Cuba over the same fishpond in question;
7. In the negotiation for repurchase, plaintiff Lydia Cuba addressed two letters to the Manager DBP, Dagupan City dated November 6, 1979 and December 20, 1979. DBP thereafter accepted the offer

to repurchase in a letter addressed to plaintiff dated February 1, 1982;

8. After the Deed of Conditional Sale was executed in favor of plaintiff Lydia Cuba, a new Fishpond Lease Agreement No. 2083-A dated March 24, 1980 was issued by the Ministry of Agriculture and Food in favor of plaintiff Lydia Cuba only, excluding her husband;
9. Plaintiff Lydia Cuba failed to pay the amortizations stipulated in the Deed of Conditional Sale;
10. After plaintiff Lydia Cuba failed to pay the amortization as stated in Deed of Conditional Sale, she entered with the DBP a temporary arrangement whereby in consideration for the deferment of the Notarial Rescission of Deed of Conditional Sale, plaintiff Lydia Cuba promised to make certain payments as stated in temporary Arrangement dated February 23, 1982;
11. Defendant DBP thereafter sent a Notice of Rescission thru Notarial Act dated March 13, 1984, and which was received by plaintiff Lydia Cuba;
12. After the Notice of Rescission, defendant DBP took possession of the Leasehold Rights of the fishpond in question;
13. That after defendant DBP took possession of the Leasehold Rights over the fishpond in question, DBP advertised in the SUNDAY PUNCH the public bidding dated June 24, 1984, to dispose of the property;
14. That the DBP thereafter executed a Deed of Conditional Sale in favor of defendant Agripina Caperal on August 16, 1984;
15. Thereafter, defendant Caperal was awarded Fishpond Lease Agreement No. 2083-A on December 28, 1984 by the Ministry of Agriculture and Food.

Defendant Caperal admitted only the facts stated in paragraphs 14 and 15 of the pre-trial order. [3]

Trial was thereafter had on other matters.

The principal issue presented was whether the act of DBP in appropriating to itself CUBAs leasehold rights over the fishpond in question without foreclosure proceedings was contrary to Article 2088 of the Civil Code and, therefore, invalid. CUBA insisted on an affirmative resolution. DBP stressed that it merely exercised its contractual right under the Assignments of Leasehold Rights, which was not a contract of mortgage. Defendant Caperal sided with DBP.

The trial court resolved the issue in favor of CUBA by declaring that DBPs taking possession and ownership of the property without foreclosure was plainly violative of Article 2088 of the Civil Code which provides as follows:

ART. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

It disagreed with DBPs stand that the Assignments of Leasehold Rights were not contracts of mortgage because (1) they were given as security for loans, (2) although the fishpond land in question is still a public land, CUBAs leasehold rights and interest thereon are alienable rights which can be the proper subject of a mortgage; and (3) the intention of the contracting parties to treat the Assignment of Leasehold Rights as a mortgage was obvious and unmistakable; hence, upon CUBAs default, DBPs only right was to foreclose the Assignment in accordance with law.

The trial court also declared invalid condition no. 12 of the Assignment of Leasehold Rights for being a clear case of *pactum commissorium* expressly prohibited and declared null and void by Article 2088 of the Civil Code. It then concluded that since DBP never acquired lawful ownership of CUBAs leasehold rights, all acts of ownership and possession by the said bank were void. Accordingly, the Deed of Conditional Sale in favor of CUBA, the notarial rescission of such sale, and the Deed of Conditional Sale in favor of defendant Caperal, as well as the Assignment of Leasehold Rights executed by Caperal in favor of DBP, were also void and ineffective.

As to damages, the trial court found ample evidence on record that in 1984 the representatives of DBP ejected CUBA and her caretakers not only from the fishpond area but also from the adjoining big

house; and that when CUBAs son and caretaker went there on 15 September 1985, they found the said house unoccupied and destroyed and CUBAs personal belongings, machineries, equipment, tools, and other articles used in fishpond operation which were kept in the house were missing. The missing items were valued at about ₱550,000. It further found that when CUBA and her men were ejected by DBP for the first time in 1979, CUBA had stocked the fishpond with 250,000 pieces of bangus fish (milkfish), all of which died because the DBP representatives prevented CUBAs men from feeding the fish. At the conservative price of ₱3.00 per fish, the gross value would have been ₱690,000, and after deducting 25% of said value as reasonable allowance for the cost of feeds, CUBA suffered a loss of ₱517,500. It then set the aggregate of the actual damages sustained by CUBA at ₱1,067,500.

The trial court further found that DBP was guilty of gross bad faith in falsely representing to the Bureau of Fisheries that it had foreclosed its mortgage on CUBAs leasehold rights. Such representation induced the said Bureau to terminate CUBAs leasehold rights and to approve the Deed of Conditional Sale in favor of CUBA. And considering that by reason of her unlawful ejection by DBP, CUBA suffered moral shock, degradation, social humiliation, and serious anxieties for which she became sick and had to be hospitalized the trial court found her entitled to moral and exemplary damages. The trial court also held that CUBA was entitled to ₱100,000 attorneys fees in view of the considerable expenses she incurred for lawyers fees and in view of the finding that she was entitled to exemplary damages.

In its decision of 31 January 1990, [4] the trial court disposed as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff:

1. DECLARING null and void and without any legal effect the act of defendant Development Bank of the Philippines in appropriating for its own interest, without any judicial or extra-judicial foreclosure, plaintiffs leasehold rights and interest over the fishpond land in question under her Fishpond Lease Agreement No. 2083 (new);
2. DECLARING the Deed of Conditional Sale dated February 21, 1980 by and between the defendant Development Bank of the Philippines and plaintiff (Exh. E and Exh. 1) and the acts of notarial rescission of the Development Bank of the Philippines relative to said sale (Exhs. 16 and 26) as void and ineffective;
3. DECLARING the Deed of Conditional Sale dated August 16, 1984 by and between the Development Bank of the Philippines and defendant Agripina Caperal (Exh. F and Exh. 21), the Fishpond Lease Agreement No. 2083-A dated December 28, 1984 of defendant Agripina Caperal (Exh. 23) and the Assignment of Leasehold Rights dated February 12, 1985 executed by defendant Agripina Caperal in favor of the defendant Development Bank of the Philippines (Exh. 24) as *void ab initio*;
4. ORDERING defendant Development Bank of the Philippines and defendant Agripina Caperal, jointly and severally, to restore to plaintiff the latters leasehold rights and interests and right of possession over the fishpond land in question, without prejudice to the right of defendant Development Bank of the Philippines to foreclose the securities given by plaintiff;
5. ORDERING defendant Development Bank of the Philippines to pay to plaintiff the following amounts:
 - a) The sum of ONE MILLION SIXTY-SEVEN THOUSAND FIVE HUNDRED PESOS (₱1,067,500.00), as and for actual damages;
 - b) The sum of ONE HUNDRED THOUSAND (₱100,000.00) PESOS as moral damages;
 - c) The sum of FIFTY THOUSAND (₱50,000.00) PESOS, as and for exemplary damages;

d) And the sum of ONE HUNDRED THOUSAND (₱100,000.00) PESOS, as and for attorneys fees;

6. And ORDERING defendant Development Bank of the Philippines to reimburse and pay to defendant Agripina Caperal the sum of ONE MILLION FIVE HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED TEN PESOS AND SEVENTY-FIVE CENTAVOS (₱1,532,610.75) representing the amounts paid by defendant Agripina Caperal to defendant Development Bank of the Philippines under their Deed of Conditional Sale.

CUBA and DBP interposed separate appeals from the decision to the Court of Appeals. The former sought an increase in the amount of damages, while the latter questioned the findings of fact and law of the lower court.

In its decision [5] of 25 May 1994, the Court of Appeals ruled that (1) the trial court erred in declaring that the deed of assignment was null and void and that defendant Caperal could not validly acquire the leasehold rights from DBP; (2) contrary to the claim of DBP, the assignment was not a cession under Article 1255 of the Civil Code because DBP appeared to be the sole creditor to CUBA - cession presupposes plurality of debts and creditors; (3) the deeds of assignment represented the voluntary act of CUBA in assigning her property rights in payment of her debts, which amounted to a novation of the promissory notes executed by CUBA in favor of DBP; (4) CUBA was estopped from questioning the assignment of the leasehold rights, since she agreed to repurchase the said rights under a deed of conditional sale; and (5) condition no. 12 of the deed of assignment was an express authority from CUBA for DBP to sell whatever right she had over the fishpond. It also ruled that CUBA was not entitled to loss of profits for lack of evidence, but agreed with the trial court as to the actual damages of ₱1,067,500. It, however, deleted the amount of exemplary damages and reduced the award of moral damages from ₱100,000 to ₱50,000 and attorneys fees, from ₱100,000 to ₱50,000.

The Court of Appeals thus declared as valid the following: (1) the act of DBP in appropriating Cubas leasehold rights and interest under Fishpond Lease Agreement No. 2083; (2) the deeds of assignment executed by Cuba in favor of DBP; (3) the deed of conditional sale between CUBA and DBP; and (4) the deed of conditional sale between DBP and Caperal, the Fishpond Lease Agreement in favor of Caperal, and the assignment of leasehold rights executed by Caperal in favor of DBP. It then ordered DBP to turn over possession of the property to Caperal as lawful holder of the leasehold rights and to pay CUBA the following amounts: (a) ₱1,067,500 as actual damages; ₱50,000 as moral damages; and ₱50,000 as attorneys fees.

Since their motions for reconsideration were denied,[6] DBP and CUBA filed separate petitions for review.

In its petition (G.R. No. 118342), DBP assails the award of actual and moral damages and attorneys fees in favor of CUBA.

Upon the other hand, in her petition (G.R. No. 118367), CUBA contends that the Court of Appeals erred (1) in not holding that the questioned deed of assignment was a *pactum commissorium* contrary to Article 2088 of the Civil Code; (b) in holding that the deed of assignment effected a novation of the promissory notes; (c) in holding that CUBA was estopped from questioning the validity of the deed of assignment when she agreed to repurchase her leasehold rights under a deed of conditional sale; and (d) in reducing the amounts of moral damages and attorneys fees, in deleting the award of exemplary damages, and in not increasing the amount of damages.

We agree with CUBA that the assignment of leasehold rights was a mortgage contract.

It is undisputed that CUBA obtained from DBP three separate loans totalling ₱335,000, each of which was covered by a promissory note. In all of these notes, there was a provision that: In the event of foreclosure of the mortgage securing this notes, I/We further bind myself/ourselves, jointly and severally, to pay the deficiency, if any. [7]

Simultaneous with the execution of the notes was the execution of Assignments of Leasehold Rights [8] where CUBA assigned her leasehold rights and interest on a 44-hectare fishpond, together with the improvements thereon. As pointed out by CUBA, the deeds of assignment constantly referred to the assignor (CUBA) as borrower; the assigned rights, as mortgaged properties; and the instrument itself, as mortgage contract. Moreover, under condition no. 22 of the deed, it was provided that failure to comply with the terms and condition of any of the loans shall cause all other loans to become due and demandable and all mortgages shall be foreclosed. And, condition no. 33 provided that if foreclosure is actually accomplished, the usual 10% attorneys fees and 10% liquidated damages of the total obligation shall be imposed. There is, therefore, no shred of doubt that a mortgage was intended.

Besides, in their stipulation of facts the parties admitted that the assignment was by way of security for the payment of the loans; thus:

3. As security for said loans, plaintiff Lydia P. Cuba executed two Deeds of Assignment of her Leasehold Rights.

In *Peoples Bank & Trust Co. vs. Odom*, [9] this Court had the occasion to rule that an assignment to guarantee an obligation is in effect a mortgage.

We find no merit in DBPs contention that the assignment novated the promissory notes in that the obligation to pay a sum of money the loans (under the promissory notes) was substituted by the assignment of the rights over the fishpond (under the deed of assignment). As correctly pointed out by CUBA, the said assignment merely complemented or supplemented the notes; both could stand together. The former was only an accessory to the latter. Contrary to DBPs submission, the obligation to pay a sum of money remained, and the assignment merely served as security for the loans covered by the promissory notes. Significantly, both the deeds of assignment and the promissory notes were executed on the same dates the loans were granted. Also, the last paragraph of the assignment stated: The assignor further reiterates and states all terms, covenants, and conditions stipulated in the promissory note or notes covering the proceeds of this loan, making said promissory note or notes, to all intent and purposes, an integral part hereof.

Neither did the assignment amount to payment by *cession* under Article 1255 of the Civil Code for the plain and simple reason that there was only one creditor, the DBP. Article 1255 contemplates the existence of two or more creditors and involves the assignment of all the debtors property.

Nor did the assignment constitute *dation* in payment under Article 1245 of the civil Code, which reads: *Dation* in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law on sales. It bears stressing that the assignment, being in its essence a mortgage, was but a security and not a satisfaction of indebtedness. [10]

We do not, however, buy CUBAs argument that condition no. 12 of the deed of assignment constituted *pactum commissorium*. Said condition reads:

12. That effective upon the breach of any condition of this assignment, the Assignor hereby appoints the Assignee his Attorney-in-fact with full power and authority to take actual possession of the property above-described, together with all improvements thereon, subject to the approval of the Secretary of Agriculture and Natural Resources, to lease the same or any portion thereof and collect rentals, to make repairs or improvements thereon and pay the same, to sell or otherwise dispose of whatever rights the Assignor has or might have over said property and/or its improvements and perform any other act which the Assignee may deem convenient to protect its interest. All expenses advanced by the Assignee in connection with purpose above indicated which shall bear the same rate of interest aforementioned are also guaranteed by this Assignment. Any amount received from rents, administration, sale or disposal of said property may be supplied by the Assignee to the payment of repairs, improvements, taxes, assessments and other incidental expenses and obligations and the balance, if any, to the payment of interest and then on the capital of the indebtedness secured hereby.

If after disposal or sale of said property and upon application of total amounts received there shall remain a deficiency, said Assignor hereby binds himself to pay the same to the Assignee upon demand, together with all interest thereon until fully paid. The power herein granted shall not be revoked as long as the Assignor is indebted to the Assignee and all acts that may be executed by the Assignee by virtue of said power are hereby ratified.

The elements of *pactum commissorium* are as follows: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.^[111]

Condition no. 12 did not provide that the ownership over the leasehold rights would automatically pass to DBP upon CUBAs failure to pay the loan on time. It merely provided for the appointment of DBP as attorney-in-fact with authority, among other things, to sell or otherwise dispose of the said real rights, in case of default by CUBA, and to apply the proceeds to the payment of the loan. This provision is a standard condition in mortgage contracts and is in conformity with Article 2087 of the Civil Code, which authorizes the mortgagee to foreclose the mortgage and alienate the mortgaged property for the payment of the principal obligation.

DBP, however, exceeded the authority vested by condition no. 12 of the deed of assignment. As admitted by it during the pre-trial, it had [w]ithout foreclosure proceedings, whether judicial or extrajudicial, appropriated the [l]easehold [r]ights of plaintiff Lydia Cuba over the fishpond in question. Its contention that it limited itself to mere administration by posting caretakers is further belied by the deed of conditional sale it executed in favor of CUBA. The deed stated:

WHEREAS, the Vendor [DBP] by virtue of a deed of assignment executed in its favor by the herein vendees [Cuba spouses] the former acquired all the rights and interest of the latter over the above-described property;

The title to the real estate property [sic] and all improvements thereon shall remain in the name of the Vendor until after the purchase price, advances and interest shall have been fully paid. (Emphasis supplied).

It is obvious from the above-quoted paragraphs that DBP had appropriated and taken ownership of CUBAs leasehold rights merely on the strength of the deed of assignment.

DBP cannot take refuge in condition no. 12 of the deed of assignment to justify its act of appropriating the leasehold rights. As stated earlier, condition no. 12 did not provide that CUBAs default would operate to vest in DBP ownership of the said rights. Besides, an assignment to guarantee an obligation, as in the present case, is virtually a mortgage and not an absolute conveyance of title which confers ownership on the assignee.^[12]

At any rate, DBPs act of appropriating CUBAs leasehold rights was violative of Article 2088 of the Civil Code, which forbids a creditor from appropriating, or disposing of, the thing given as security for the payment of a debt.

The fact that CUBA offered and agreed to repurchase her leasehold rights from DBP did not estop her from questioning DBPs act of appropriation. Estoppel is unavailing in this case. As held by this Court in some cases,^[13] estoppel cannot give validity to an act that is prohibited by law or against public policy. Hence, the appropriation of the leasehold rights, being contrary to Article 2088 of the Civil Code and to public policy, cannot be deemed validated by estoppel.

Instead of taking ownership of the questioned real rights upon default by CUBA, DBP should have foreclosed the mortgage, as has been stipulated in condition no. 22 of the deed of assignment. But, as admitted by DBP, there was no such foreclosure. Yet, in its letter dated 26 October 1979, addressed to the Minister of Agriculture and Natural Resources and coursed through the Director of the Bureau of Fisheries and Aquatic Resources, DBP declared that it had foreclosed the mortgage

and enforced the assignment of leasehold rights on March 21, 1979 for failure of said spouses [Cuba spouses] to pay their loan amortizations.^[14] This only goes to show that DBP was aware of the necessity of foreclosure proceedings.

In view of the false representation of DBP that it had already foreclosed the mortgage, the Bureau of Fisheries cancelled CUBAs original lease permit, approved the deed of conditional sale, and issued a new permit in favor of CUBA. Said acts which were predicated on such false representation, as well as the subsequent acts emanating from DBPs appropriation of the leasehold rights, should therefore be set aside. To validate these acts would open the floodgates to circumvention of Article 2088 of the Civil Code.

Even in cases where foreclosure proceedings were had, this Court had not hesitated to nullify the consequent auction sale for failure to comply with the requirements laid down by law, such as Act No. 3135, as amended.^[15] With more reason that the sale of property given as security for the payment of a debt be set aside if there was no prior foreclosure proceeding.

Hence, DBP should render an accounting of the income derived from the operation of the fishpond in question and apply the said income in accordance with condition no. 12 of the deed of assignment which provided: Any amount received from rents, administration, may be applied to the payment of repairs, improvements, taxes, assessment, and other incidental expenses and obligations and the balance, if any, to the payment of interest and then on the capital of the indebtedness.

We shall now take up the issue of damages.

Article 2199 provides:

Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Actual or compensatory damages cannot be presumed, but must be proved with reasonable degree of certainty.^[16] A court cannot rely on speculations, conjectures, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered by the injured party and on the best obtainable evidence of the actual amount thereof.^[17] It must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.^[18]

In the present case, the trial court awarded in favor of CUBA ₱1,067,500 as actual damages consisting of ₱550,000 which represented the value of the alleged lost articles of CUBA and ₱517,500 which represented the value of the 230,000 pieces of bangus allegedly stocked in 1979 when DBP first ejected CUBA from the fishpond and the adjoining house. This award was affirmed by the Court of Appeals.

We find that the alleged loss of personal belongings and equipment was not proved by clear evidence. Other than the testimony of CUBA and her caretaker, there was no proof as to the existence of those items before DBP took over the fishpond in question. As pointed out by DBP, there was not inventory of the alleged lost items before the loss which is normal in a project which sometimes, if not most often, is left to the care of other persons. Neither was a single receipt or record of acquisition presented.

Curiously, in her complaint dated 17 May 1985, CUBA included losses of property as among the damages resulting from DBPs take-over of the fishpond. Yet, it was only in September 1985 when her son and a caretaker went to the fishpond and the adjoining house that she came to know of the alleged loss of several articles. Such claim for losses of property, having been made before knowledge of the alleged actual loss, was therefore speculative. The alleged loss could have been a mere afterthought or subterfuge to justify her claim for actual damages.

With regard to the award of ₱517,000 representing the value of the alleged 230,000 pieces of bangus which died when DBP took possession of the fishpond in March 1979, the same was not called for. Such loss was not duly proved; besides, the claim therefor was delayed unreasonably. From 1979 until after the filing of her complaint in court in May 1985, CUBA did not bring to the attention of DBP the alleged loss. In fact, in her letter dated 24 October 1979,^[19] she declared:

1. That from February to May 1978, I was then seriously ill in Manila and within the same period I neglected the management and supervision of the cultivation and harvest of the produce of the aforesaid fishpond thereby resulting to the irreparable loss in the produce of the same in the amount of about ₱500,000.00 to my great damage and prejudice due to fraudulent acts of some of my fishpond workers.

Nowhere in the said letter, which was written seven months after DBP took possession of the fishpond, did CUBA intimate that upon DBPs take-over there was a total of 230,000 pieces of bangus, but all of which died because of DBPs representatives prevented her men from feeding the fish.

The award of actual damages should, therefore, be struck down for lack of sufficient basis.

In view, however, of DBPs act of appropriating CUBAs leasehold rights which was contrary to law and public policy, as well as its false representation to the then Ministry of Agriculture and Natural Resources that it had foreclosed the mortgage, an award of moral damages in the amount of ₱50,000 is in order conformably with Article 2219(10), in relation to Article 21, of the Civil Code. Exemplary or corrective damages in the amount of ₱25,000 should likewise be awarded by way of example or correction for the public good.^[20] There being an award of exemplary damages, attorneys fees are also recoverable.^[21]

WHEREFORE, the 25 May 1994 Decision of the Court of Appeals in CA-G.R. CV No. 26535 is hereby REVERSED, except as to the award of ₱50,000 as moral damages, which is hereby sustained. The 31 January 1990 Decision of the Regional Trial Court of Pangasinan, Branch 54, in Civil Case No. A-1574 is MODIFIED setting aside the finding that condition no. 12 of the deed of assignment constituted *pactum commissorium* and the award of actual damages; and by reducing the amounts of moral damages from ₱100,000 to ₱50,000; the exemplary damages, from ₱50,000 to ₱25,000; and the attorneys fees, from ₱100,000 to ₱20,000. The Development Bank of the Philippines is hereby ordered to render an accounting of the income derived from the operation of the fishpond in question.

Let this case be REMANDED to the trial court for the reception of the income statement of DBP, as well as the statement of the account of Lydia P. Cuba, and for the determination of each party's financial obligation to one another.

SO ORDERED.

Belloillo, Vitug, and Kapunan, JJ., concur.

^[1] Original Record (OR), 1-7.

^[2] OR, 168-170.

^[3] See OR, 169.

^[4] Per Judge Artemio R. Corpus. OR, 686-705.

^[5] Per Manuel C. Herrera, *J.*, with Artemon D. Luna and Alfredo J. Lagamon, *JJ.*, concurring. *Rollo*, G.R. No. 118342, 21-41; *Rollo*, G.R. No. 118367, 33-53.

^[6] *Rollo* G.R. No. 118342, 43; *Rollo*, G.R. No. 118367, 55.

^[7] Exhibits B, C, and D; OR, 37-39.

[8] Exhibits B-1, C-1, and D-1.

[9] 64 Phil. 126, 132 [1937].

[10] Philippine Bank of Commerce v. De Vera, 6 SCRA 1026, 1029 [1962].

[11] V Tolentiino, Arturo M., Commentaries & Jurisprudence on the Civil Code of the Philippines 536-537 [1992] citing Uy Tong v. Court of Appeals, 161 SCRA 383 [1988].

[12] Philippine Bank of Commerce v. De Vera, *supra* note 10.

[13] Eugenio v. Perrido, 97 Phil. 41, 44 [1955]; Republic v. Go Bon Lee, 1 SCRA 1166, 1170 [1961]; Hian v. Court of Tax Appeals, 59 SCRA 110, 124 [1974].

[14] Exhibit N-1-A; OR, 454.

[15] Roxas v. Court of Appeals, 221 SCRA 729 [1993]; Sempio v. Court of Appeals, 263 SCRA 617 [1996].

[16] Del Mundo v. Court of Appeals, 240 SCRA 348 [1995]; Lufthansa German Airlines v. Court of Appeals, 243 SCRA 600 [1995]; Development Bank of the Philippines v. Court of Appeals, 249 SCRA 331 [1995]; Del Rosario v. Court of Appeals, G.R. No. 118325, 29 January 1997.

[17] Lufthansa German Airlines v. Court of Appeals, *supra* note 16; People v. Rosario, 246 SCRA 658 [1995]; Del Rosario v. Court of Appeals, *supra* note 16; Sumalpong v. Court of Appeals, G.R. No. 123404, 26 February 1997.

[18] Del Mundo v. Court of Appeals, *supra* note 16.

[19] Exhibit 4, OR, 560.

[20] Article 2229, Civil Code.

[21] Article 2208(1), Civil Code.